

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Jochum Agri-Services, Inc.

Plymouth County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2012-AFO-03**

**TO: Bradley Jochum, President
Jochum Agri-Services, Inc.
21263 K-49
LeMars, IA 51031**

I. SUMMARY

This administrative consent order (order) is entered into between Jochum Agri-Services, Inc. (Jochum) and the Iowa Department of Natural Resources (Department). Jochum hereby agrees to cease all illegal discharges to waters of the state, apply manure in a manner which will not cause surface or groundwater pollution, and pay an administrative penalty. In the interest of avoiding litigation, the parties have agreed to the following provision.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Jennifer Christian, Environmental
Specialist
IDNR Field Office #3
1900 North Grand
Spencer, IA 51301
712/262-4177

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law

Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

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II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, or Iowa Code chapter 459 and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Jochum is a certified commercial manure service in the state of Iowa, which has approximately 12 employees.
2. On October 22, 2011, Jochum directly injected manure into a field located in the NE ¼ of Section 26, Sherman Twp, Sioux County, Iowa. To inject the manure Jochum used a drag hose. This hose was placed in a road culvert which discharges to an unnamed tributary to the west branch of the Floyd River. The hose crossed the Plymouth and Sioux County line. The manure which was being directly injected originated from Dykstra Dairy which is located in Plymouth County, Iowa. At approximately 8:15 pm a coupler broke on the hose. This resulted in a discharge to the culvert and an unnamed tributary to the west branch of the Floyd River.
3. On October 22, 2011, immediately following the release of manure, Mr. Jochum reported it to the Department. At approximately 8:30 pm Jennifer Christian, Environmental Specialist with the Department, responded to Mr. Jochum's call. She spoke with Mr. Jochum who informed her of the spill and explained that the manure pumps had been shut down, the hose was clamped above the broken coupler and Jochum was in the process of constructing two earthen dams to capture the manure laden water so that it may be removed and land applied. Mr. Jochum stated that the current flow in the tributary was very low and that there was no evidence of either live or dead fish. Ms. Christian recommended that Jochum continue its spill response, she also stated that she would conduct an investigation in the morning.
4. On October 23, 2011, Ms. Christian arrived at the site and discussed the cleanup efforts with Mr. Jochum. She observed that Jochum was still in the process of pumping out the manure laden water which was captured by the dam. Ms. Christian and Mr. Jochum traveled upstream to the point of the coupler failure and the initial manure release. At this location Ms. Christian observed pooled manure in various areas. She observed that vegetation in the ditch and along the creek bank was coated with manure. She recommended that clean water be used to flush the manure downstream to the

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earthen dam where it could be pumped out and then land applied. Mr. Jochum agreed to this recommendation.

5. Throughout the day Ms. Christian took photos, field tests and laboratory samples of the tributary at various locations. The below table summarizes Ms. Christian's observations and the results of the field tests taken during the investigation:

Sample Location	Ammonia	Water Clarity, Flow & Odor	Fish Present
Site #1 Upstream	0.2 ppm	Clear, low flow, no odor	No
Site #2 Coupler Break	1.4 ppm	Slightly dirty, low flow, manure odor	No
Site #3 1st Earthen Dam	30 ppm	Dirty, low flow, manure odor	No
Site #4 2nd Earthen Dam	90 ppm	Dirty, low flow, manure odor	No
Site #5 Harrison Avenue Bridge	0.2 ppm	Clear, increased flow, no odor	Yes
Site #6 Highway 75 Bridge	0.2 ppm	Slightly dirty, increased flow, no odor	No

6. The below table summarizes the results of the laboratory samples taken during the investigation:

Sample Location	Ammonia Nitrogen as N
Site #1 Upstream	<0.1 ppm
Site #2 Coupler Break	1.1 ppm
Site #3 1st Earthen Dam	28 ppm
Site #4 2nd Earthen Dam	69 ppm
Site #5 Harrison Avenue Bridge	0.3 ppm

7. On October 24, 2011, Ms. Christian returned to the location of the spill. She observed that Jochum was continuing cleanup efforts. Mr. Jochum stated that they had been using the drag hose to flush the tributary with clean water since approximately 1:00 pm on October 23, 2011. He explained that he ran water through the hose to push out any manure that remained. Then the hose was connected to a well located at Dykstra Dairy and water was pumped through the line to the point of the broken coupler. The

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hose was then picked up and the manure was sprayed out of the ditch and off the banks of the tributary. The hose was then draped over the edge of the bank to dispense clean water into the tributary and to push the water downstream to the dam, where the water was then pumped out and land applied.

8. Throughout the day Ms. Christian took field tests at various locations. The below table summarizes the results of those field tests:

Site Location	Ammonia
Site #1 Coupler Break	0.2 ppm
Site #2 1st Dam	2.2 ppm
Site #3 2nd Dam	2.6 ppm

CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.
2. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land applied in a manner which will not cause surface or groundwater pollution. Jochum land applied manure, which resulted in a manure discharge to a water of the State. The above-mentioned facts indicate a violation of this provision.
3. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. A National Pollution Discharge Elimination System (NPDES) permit has not been issued for this facility. Therefore, the foregoing facts establish that this provision has been violated.
4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The Department observed high levels of manure in the unnamed tributary and on vegetation and the banks surrounding the unnamed tributary. Therefore the above-facts disclose a violation of one or more of these criteria.

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V. ORDER

THEREFORE, the Department orders and Jochum agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. In the future Jochum shall apply manure in a manner that will not cause surface or groundwater pollution; and
2. Jochum shall pay a penalty of \$3,000.00 within 30 days of the date the Director signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this order is \$3,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Jochum saved time and money by not taking the time to find a better route for the placement of the drag hose. It also saved time and money by not continuously monitoring the portion of the drag hose that contained a couplet. For these reasons \$500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. There was a release of manure that caused water quality violations and the level of pollutants was such that if fish had been present in the stream it is unlikely that they would have survived. Thus, there was actual and potential environmental harm documented. Based on the above considerations, \$1,500.00 is assessed for this factor.

Culpability – All manure applicators have a duty to remain knowledgeable of the Department's requirements and implement measures necessary to avoid manure entering

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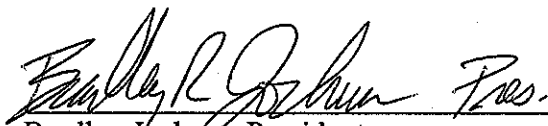
a water of the State. The placement of a drag hose that contained a coupler in a road culvert that drains to a water of the State was an unnecessary risk. At a minimum Jochum should have been aware of the risk and increased monitoring at the point of the coupler. Thus, Jochum did not apply the appropriate standard of care. For these reasons \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Jochum. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Bradley Jochum, President
Jochum Agri-Services, Inc.

Dated this 19 day of
January, 2012.



Roger L. Lande, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24th day of
January, 2012.

Jochum Agri-Services, Inc., Field Office 3, Carrie Schoenebaum; Eric Wiklund, I.C.1., & I.C.6 a.